

HUMAN SERVICES BOARD

INTRODUCTION

Although the alleged victim and his community mental health case manager testified competently and credibly at the hearing (held on June 18, 2008, and continued by phone on June 24, 2008), most of the following findings of fact are taken from the testimony and admissions of the petitioner at

the hearing, as well as from the trust documents later submitted by the petitioner.

FINDINGS OF FACT

1. The petitioner is the sister of AK, a fifty-seven-year-old man who is disabled due to schizophrenia. AK receives SSI and Food Stamps.

2. When the petitioner's parents died, they had created trusts to provide for the needs of AK. The petitioner and her sister were named as trustees. However, the petitioner's sister later resigned, and for the last several years the petitioner has acted as the sole trustee.

3. Among the provisions of the trusts was for the petitioner, as trustee, to use the assets of the trusts to provide for AK's needs. For several years AK lived in a house that was left by the parents and was part of their trust estate. Although it is not clear from the trusts themselves, the petitioner expected AK to pay her as trustee \$300 a month in rent to live in the house.

4. According to the petitioner, prior to June 2007 AK had refused to pay rent for several months.

5. The petitioner has had a long-standing disagreement with AK's community mental health providers and legal

guardians regarding AK's ability to live without supervision in the community. She feels that complaints to those individuals regarding AK's non-payment of rent, drug use and threatening behavior went unaddressed.

6. In May 2007, AK traveled to Arizona to attend his daughter's high school graduation. In June he notified the petitioner that he was returning with a rental cargo trailer. At that time the petitioner put money in the AK's debit card account so that he could pay for gas on his return trip.

7. The petitioner admits that when AK was in Arizona she and her husband entered his home, removed virtually all of his personal belongings, and attempted to lock him out of the house. When AK returned to his home he was able to gain entry, but discovered that all his possessions were gone.

8. Fortunately, AK was able to obtain legal help, and after legal action was threatened against her the petitioner, after several days, returned many of the items she had taken from the home.

9. Before AK returned, however, the petitioner had sold several of AK's possessions, including his washing machine and bed; and she had given away several other items, including AK's kitchen table and chairs, many of his tools, and his skis and camping equipment. As of the date of the

hearing the petitioner had not returned these items or reimbursed AK for their value.

10. At the hearing, and in her statements to AK's caregivers and Department investigators, the petitioner has given conflicting reasons for her actions. She stated that she believed she was legally justified (until the police told her otherwise, after the fact) in selling AK's possessions to satisfy his overdue rent. She also stated that she wanted to get AK out of the home because she felt it was "going downhill". She also stated that she felt personally threatened by AK (although it is not clear how her actions would have been calculated to ameliorate this alleged threat).

11. When confronted by AK's case manager after she had removed his belongings and locked him out, the petitioner responded that AK could live in a homeless shelter.

12. The petitioner admitted that she manages other rental properties she inherited in 2003. In light of this, coupled with her confrontational demeanor throughout the incident and continuing at the hearing, it is simply not credible that she believed that her actions were legally defensible.

13. Although the trust agreements allow the petitioner, as trustee, near total discretion to administer the assets of the trusts for AK's benefit, nothing in the language of the trusts remotely confers or implies a power on her part to seize or dispose of AK's personal property or to render him homeless solely to reimburse or to maintain the trust. It is not credible that the petitioner actually or could have believed she was acting in good faith as the trustee of assets clearly intended to be used for AK's benefit.

ORDER

The Department's decision is affirmed.

REASONS

There is no dispute in this matter that AK meets the definition of a "vulnerable adult". See 33 V.S.A. § 6902(14). Under 33 V.S.A. §§ 6902(6)(A)&(B), "exploitation" includes "willfully using, withholding, transferring or disposing of funds or property of a vulnerable adult without or in excess of legal authority for the wrongful profit or advantage of another" or "acquiring possession or control of an interest in funds or property of a vulnerable adult through the use of undue influence, harassment, duress or fraud".

The Board has recently ruled that under these definitions, a determination of the alleged perpetrator's motives is crucial. See Fair Hearing No. 20,590. In this case, however, there is no credible basis to conclude that the petitioner did not know that she was acting contrary to AK's interests in order to benefit either herself or what she unilaterally determined to be the paramount interests of the trust estate. Inasmuch as the petitioner's actions clearly constituted exploitation as defined in the statute, the Department's decision substantiating the incident as exploitation of AK must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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